IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 121 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANEKLAL HARILAL SPG & MFG CO LTD
Versus
COMMISSIONER OF INCOME-TAX

Appearance:
1. INCOME TAX REFERENCE No. 121 of 1985
MR HM TALATI for Applicant.
MR BB NAYAK FOR MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the applicant, the following two questions have been referred to this Court for its opinion under the provisions of Section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act').

"1 Whether, on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that payment of bank guarantee commission was expenditure of capital nature ?

2 Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that commission paid to Managing Directors was remuneration and requires to be added for the provisions of section 40(c) of the I.T.Act,1961?"

2 We have heard learned Advocate Mr.Talati appearing for the applicant and learned Advocate Mr.B.B.Nayak appearing for the respondent.

3 During pendency of this Reference both the questions which have been referred to this Court have been answered by different Courts.

4 So far as the first question is concerned, it has been decided by the Hon'ble Supreme Court in the case of I.T.R. vs. Sivakami Mills Ltd, 227 I.T.R. 465. Looking to the law laid down by the Hon'ble Supreme Court in the said case we answer the said question in the negative i.e. in favour of the assessee and against the revenue.

5 So far as the second question is concerned, it has also been answered by this Court in the case of C.I.T. vs. Rohit Mills Ltd. Looking to the law laid down by this Court in the said judgment we answer the question in the affirmative i.e. against the assessee and in favour of the revenue.

6 The Reference thus stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(A.R.Dave,J) (D.A.Mehta, J)

m.m.bhatt